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Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) **Civ. No. CV03 00385 SOM-LEK**
) **(Copyright)**
Plaintiff,)
) **DECLARATION OF**
vs.) **TIMOTHY J. HOGAN**
) **EXHIBITS “1” TO “8”**
HAWAIIAN EXPRESS SERVICE,)
INC., a California corporation; et al.)
)
)

DECLARATION OF TIMOTHY J. HOGAN

I, TIMOTHY J. HOGAN am an attorney licensed to practice before all the courts of the State of Hawaii and I make this declaration under penalty of perjury.

All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon I am willing and able to testify regarding the matters herein.

1. Attached hereto as Exhibit "1" is a true and correct copy of an excerpt of the Declaration of Timothy J. Hogan filed in support of Mr. Berry's Objection to the Masters Report on November 8, 2006. The Exhibits are not attached to this excerpt.

2. Attached hereto as Exhibit "2" is a true and correct copy of an excerpt of the Affidavit of Timothy J. Hogan filed on March 15, 2006 in support of Plaintiff's Motion for Attorneys Fees and Full Costs, at paras. 14 to 21. The Exhibits are not attached to this excerpt.

3. Attached hereto as Exhibit "3" is a true and correct copy of Exhibit "11" to my March 15, 2006 affidavit that is a true and correct copy of letter dated November 4, 2005 from me to C&S' attorney Lex Smith, Esq. proposing a settlement for an agreement to waive any right to appeal the spreadsheet infringement ruling for an agreement from C&S to return Mr. Berry's works that were left on the computers sold by Fleming.

4. Attached hereto as Exhibit "4" is a true and correct copy of the January 9, 2006 letter I received from C&S and the PCT's concurrent counsel that

denied that he had told me that C&S was still using Berry works, when he did say that to me.

5. Attached hereto as Exhibit "5" is a true and correct excerpt from The PCT's Motion for an Order in Aid of Implementation of the Plan filed by Post-Confirmation Trust in *In re Fleming Companies, Inc.*, Bk. No. 03-10945 MFW (Bankr. DE) on December 4, 2006.

6. Attached hereto as Exhibit "6" is a true and correct copy of the Response to and Reservation of Rights With Respect to The PCT's Motion for an Order in Aid of Implementation of the Plan Filed by C&S Acquisition LLC, C&S Wholesale Grocers, Inc., in *In re Fleming Companies, Inc.* ,Bk. No. 03-10945 MFW (Bankr. DE) on January 18, 2007.

7. Attached hereto as Exhibit "7" is a true and correct copy of Declaration of Timothy J. Hogan filed on November 16, 2004.

8. Attached hereto as Exhibit "8" is a true and correct copy of an excerpt of the Transcript of Proceedings Before the Honorable Susan Oki Mollway, January 24, 2006 page 5 to page 7.

Dated: Honolulu, Hawaii, February 16, 2007.

/S/Timothy J. Hogan

TIMOTHY J. HOGAN